MASTER AND SERVANT—WAIVER OF RIGHT OF DISCHARGE.—Plaintiff was employed by the defendants to act, play and sing at the defendant's theater. The plaintiff refused to play a part assigned to her, and defendant told her that she would have to play the part or her contract was broken. Later the defendant said to the plaintiff, "Listen to me. You think the matter over and consider and do me a favor and play the part." The evening of the same day the plaintiff informed the defendant by telephone that she would play the part. The next day when plaintiff came to defendant's office, defendant said, "You have broken your contract and you are discharged." Plaintiff sued for wrongful discharge. *Held,* that an employer, by continuing an employee in his employ after cause for discharge exists, does not as a matter of law waive thereby the right to discharge the employee. *Rafalo et al.* v. *Edelstein et al.* (1913) 140 N. Y. Supp. 1076.

By the weight of authority in this country, when a master with knowledge of a material breach of contract by the servant, continues that servant in his employment, he is thereby presumed to have waived the breach and will not be allowed to set it up afterwards. *Ginning Co.* v. *McLaney,* 153 Ala. 586, 44 So. 1023; *Reynolds* v. *Hart,* 42 Colo. 150, 94 Pac. 14; *Collins Ice Cream Co.* v. *Stephens,* 189 Ill. 200, 59 N. E. 524; *Sharp* v. *McBride,* 120 La. 143, 45 So. 41; *Daniell* v. *Boston R. R. Co.,* 184 Mass. 337, 68 N. E. 337; *Batchelder* v. *El. Co.,* 227 Pa. 201, 75 Atl. 1090; *Dillard* v. *Wallace,* 1 McMullen (S. C.) 480; *Plow Co.* v. *London* (Tex.) 125 S. W. 974; *Hauerbach* v. *Calder,* 15 Utah 371, 49 Pac. 649; *Tickler* v. *Andrae Mfg. Co.,* 95 Wis. 352, 70 N. W. 292; *Jones* v. *Trinity Parish,* 19 Fed. 59. A limitation on the above rule recognized in many cases is that retention after breach of contract is a *prima facie* waiver and condonation is presumed, but if there are circumstances shown that tend to establish a reasonable or proper excuse for delay, it is for the jury to say whether in fact the breach was condoned. WOOD, MASTER & SERVANT, § 121; *James* v. *Trinity Parish, supra,* 59; *Tickler* v. *Andrae Mfg. Co., supra; Batchelder* v. *El. Co., supra; Atlantic Express Co.* v. *Young,* 118 Ga. 868, 45 S. E. 677. Another qualification of the above rule found in some cases is that the fact that a servant is retained after a commission of a breach of duty, will not preclude the master from using it as a ground for discharge, if the offense is repeated. *Gray* v. *Shepard,* 147 N. Y. 177; *McIntyre* v. *Hochin,* 16 Ont. App. 498; *Hauerbach* v. *Calder,* 15 Utah 371, 49 Pac. 649; *Daniell* v. *Boston R. R. Co.,* 184 Mass. 337, 68 N. E. 337; *Troy Fertilizer Co.* v. *Logan,* 90 Ala. 325, 8 So. 46. The cases in New York do not seem to be harmonious in their holdings. *Jerome* v. *Queen City Cycle Co.,* 163 N. Y. 351, 57 N. E. 485, cited in the principal case, holds that the offense has not been waived so as to preclude its use if the offense is repeated. *Gray* v. *Shepard,* 147 N. Y. 177, 41 N. E. 500, holds that if the servant continues his course of unfaithfulness, the master may determine from the whole course of conduct whether or not to terminate the employment, which practically amounts to the same rule. In *Rosback* v. *Sackett & Williams,* 134 App. Div. 130, 118 N. Y. Supp. 846, the court says that continuing the employment of a servant after a breach is not such a waiver as will preclude him from explaining the delay. All of these cases seem to hold inferentially that one breach

unexplained would be waived by continuing the employment. *Sabin* v. *Kendrick*, 58 App. Div. 108, 68 N. Y. Supp. 546, holds that continuation of employment after breach is a waiver. *Dunkell* v. *Simons*, 7 N. Y. Supp. 655, supports the principal case, but the holding is the minority rule in this country.

MINES AND MINERALS—RESERVATION OF PETROLEUM AND NATURAL GAS.—In a deed to defendant's predecessor "all mineral and mining rights" were reserved to the grantor. Plaintiff here succeeded to those reserved rights. *Held*, that such reservation did not include petroleum and natural gas. *Preston et al.* v. *South Penn. Oil Co.* (Pa. 1913) 86 Atl. 203.

The decision in the case is based on only two Pennsylvania cases in accord with it, and only two other states are cited as reaching the same conclusions. The decision seems to be contrary not only to the weight of authority generally, but even to the law in Pennsylvania. As a general proposition "minerals" include all substances which are obtained from below the surface for profit. *Williams* v. *S. Penn. Oil Company*, 52 W. Va. 188; *Murray* v. *Allred*, 100 Tenn. 100. Salt lakes and salt springs are classed as "minerals." *State* v. *Parker*, 61 Tex. 265. Water is a "mineral." *Ridgeway Light & Heat Co.* v. *Elk County*, 191 Pa. 468; *West Moreland & Cambria Natural Gas Co.* v. *DeWitt*, 130 Pa. 249. Within this definition and these cases oil and petroleum must logically be included. So it seems to be by far the weight of authority in spite of the decision in the principal case. *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190; *Manufacturers Gas & Oil Co.* v. *Indiana Natural Gas & Oil Co.*, 155 Ind. 468; *Gill* v. *Weston*, 110 Pa. 312; *Marshall* v. *Mellon*, 179 Pa. 371; *Williamson* v. *Jones*, 39 W. Va. 231; *Southern Oil Co.* v. *Colquit*, 28 Tex. Civ. App. 292; *Weaver* v. *Richards*, 156 Mich. 320; *Wagner* v. *Mallory*, 169 N. Y. 505; *Kelley* v. *Ohio Oil Co.*, 57 Oh. 317; SNYDER, MINES, §§ 143, 146.

MUNICIPAL CORPORATIONS—BUILDING REGULATIONS.—The city of Denver by ordinance prohibited the erection of store buildings within a specified residence section unless a majority of the land-owners on both sides of the street should consent, and unless the building should be erected a specified distance back from the front line of the lots. *Held*, that both these requirements were illegal, and that the building inspector could not refuse a permit because of non-compliance therewith. *Willison* v. *Cooke*, (Colo. 1913) 130 Pac. 828.

Judicial view expressed almost entirely in dicta is that attempts by municipalities to establish building lines by ordinances are abortive. See 11 MICH. L. REV. 401. The rule has been laid down and often approved that a city cannot, even under express legislative authority, impose restrictions upon the use of private property which are induced solely by æsthetic considerations. 2 DILLON, MUNIC. CORP. (5th Ed.) § 695; *Passaic* v. *Paterson Bill Posting Co.*, 72 N. J. L. 285; *Curran Co.* v. *City of Denver*, 47 Col. 226; 107 Pac. 261, 27 L. R. A. N. S. 544. It is, however, a valid exercise of the police power to establish reasonable restrictions on the character and size of buildings, to provide for security against fire, and to promote the public health or safety. FREUND, POLICE POWER, §§ 118, 128; *Welch* v. *Swasey*, 193 Mass. 364, 214